

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
PETER K. THOMSEN

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Appearances:

For Appellant: Peter K. Thomsen,
in pro. per.

For Respondent: Carl G. Knopke
Allen R. Wildermuth
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Peter K. Thomsen against a proposed assessment of additional personal income tax and penalties in the total amount of \$2,254.91 for the year 1979.

Appeal of Peter K. Thomsen

The issue for determination is whether appellant has established any error in respondent's determination.

Appellant Peter K. Thomsen filed a state income tax return form for the year 1979 setting forth only his name, address, filing status, and spouse's occupation. He filled the remaining blanks on the form with the words "object" or "none", and indicated that he was asserting a Fifth Amendment right against self-incrimination. When appellant failed to file a proper return after respondent's demand, respondent issued a proposed assessment based upon information received from the California Employment Development Department. The proposed assessment included penalties for late filing, for failure to file after notice and demand, and for negligence. (Rev. & Tax. Code, §§ 18681, 18683, and 18684.) Respondent subsequently reduced the assessed tax and penalties to allow a credit for state income tax that had been withheld from his wages.

Claiming a Fifth Amendment privilege, appellant requests immunity from reporting his income on the theory that such information could incriminate him with respect to some undisclosed crime. He also asserts that respondent's estimation of tax does not take into account credits that are due him.

We have considered and rejected these arguments in numerous cases quite similar to this case. (See, e.g., Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Feb. 6, 1980; Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.) Article III, section 3.5, of the California Constitution, as well as established policy of this board, bar us from ruling on constitutional questions raised in appeals involving deficiency assessments. (Appeal of Leon C. Harwood, Cal. St. Bd. of Equal., Dec. 5, 1978; Appeal of William F. and Dorothy M. Johnson, Cal. St. Bd. of Equal., Oct. 6, 1976.) Furthermore, respondent's determinations of additional tax and penalties are presumed correct, and the taxpayer bears the burden of proving that they are wrong. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) Since he has made no attempt to do so, we must sustain respondent's action.

Appeal of Peter K. Thomsen

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Peter K. Thomsen against a proposed assessment of additional personal income tax and penalties in the total amount of \$2,254.91 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of August: ,
1982, by the State Board of Equalization, with Board Members
Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

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